

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 18-23538-rdd

4 - - - - - x

5 In the Matter of:

6

7 SEARS HOLDINGS CORPORATION,
8 Debtor.

9 - - - - - x

10 Adv. Case No. 20-07007-rdd

11 - - - - - x

12 SEARS HOLDINGS CORPORATION et al.,
13 Plaintiffs,

14 v.

15 TISCH et al.,
16 Defendants.

17 - - - - - x

18 Adv. Case No. 19-08250-rdd

19 - - - - - x

20 SEARS HOLDINGS CORPORATION et al.,
21 Plaintiffs,

22 v.

23 LAMPERT et al.,
24 Defendants.

25 - - - - - x

1 United States Bankruptcy Court
2 300 Quarropas Street, Room 248
3 White Plains, NY 10601
4

5 February 23, 2021

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21 B E F O R E :
22 HON ROBERT D. DRAIN
23 U.S. BANKRUPTCY JUDGE
24
25 ECRO: JUSTIN WALKER

1 HEARING re Notice of Agenda of Matters Scheduled for
2 Telephonic Hearing on February 23, 2021 at 10:00 a.m.

3
4 HEARING re Notice of Hearing on Interim Applications for
5 Allowance of Compensation and Reimbursement of Expenses on
6 February 23, 2021 at 10:00 a.m. (related
7 document(s) 9179, 9191, 9181, 9185, 9180, 9183, 9182)

8
9 HEARING re Sixth Application of Weil, Gotshal & Manges LLP,
10 as Attorneys for the Debtors, for Interim Allowance of
11 Compensation for Professional Services Rendered and
12 Reimbursement of Actual and Necessary Expenses Incurred
13 Period: 7/1/2020 to 10/31/2020, fee: \$2,006,207.00, expenses:
14 \$153,835.61. filed by Weil, Gotshal & Manges LLP.
15 (ECF #9183)

16
17 HEARING re Fourth Interim Fee Application of Prime Clerk,
18 Administrative Advisor to the Debtors, for Compensation for
19 Services and Reimbursement of Expenses for the Period from
20 July 1, 2020 through October 31, 2020 Filed by Adam M. Adler
21 on behalf of Prime Clerk LLC. (ECF #9185)

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1 HEARING re Sixth Interim Fee Application of Akin Gump
2 Strauss Hauer & Feld LLP as Counsel to the Official
3 Committee of Unsecured Creditors for Allowance of
4 Compensation for Services Rendered and Reimbursement of
5 Expenses for the Period: 7/1/2020 to 10/31/2020, fee:
6 \$3,684,378.50, expenses: \$4,083,695.70. filed by Akin Gump
7 Strauss Hauer & Feld LLP. (ECF #9180)

8
9 HEARING re Sixth Interim Application of FTI Consulting,
10 Inc., Financial Advisor to the Official Committee of
11 Unsecured Creditors of Sears Holdings Corporation, et al.,
12 for Interim Allowance of Compensation and Reimbursement of
13 Expenses for the Period: 7/1/2020 to 10/31/2020, fee:
14 \$37,480.50, expenses: \$140.00. filed by FTI Consulting, Inc.
15 (ECF #9181)

16
17 HEARING re Third Interim Fee Application of Herrick,
18 Feinstein LLP as Special Conflicts Counsel to the Official
19 Committee of Unsecured Creditors for Allowance of
20 Compensation for Services Rendered and Reimbursement of
21 Expenses for the Period of July I, 2020 Through and
22 Including October 31, 2020 filed by Herrick, Feinstein LLP.
23 (ECF #9179)

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1 HEARING re Second Application for Interim Professional
2 Compensation OF MORITT HOCK & HAMROFF LLP AS SPECIAL
3 CONFLICTS COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED
4 CREDITORS FOR ALLOWANCE OF COMPENSATION FOR SERVICES
5 RENDERED AND REIMBURSEMENT OF EXPENSES, Period: 7/1/2020 to
6 10/31/2020, fee:\$273,371.00, expenses: \$3,566.21 filed by
7 James P Chou. (ECF #9182)

8
9 HEARING re Fifth Joint Application of Paul E. Harner, as Fee
10 Examiner and Ballard Spahr LLP, as Counsel to the Fee
11 Examiner for Interim Allowance of Compensation for
12 Professional Services Rendered and Reimbursement of Actual
13 and Necessary Expenses Incurred Period: 7/1/2020 to
14 10/31/2020, fee:\$348,947.00, expenses: \$324.94. (ECF #9191)

15
16 HEARING re Adversary proceeding: 20-07007-rdd Sears Holdings
17 Corporation et al v. Tisch et al Motion to Consolidate for
18 Trial /NOTICE OF MOTION TO CONSOLIDATE RELATED ADVERSARY
19 PROCEEDINGS AND ENTER AN AMENDED SCHEDULING ORDER (ECF #76)

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1 HEARING re Adversary proceeding: 20-07007-rdd Sears Holdings
2 Corporation et al v. Tisch et al Objection to Motion
3 Objection of Defendant HSBC Bank Bermuda Limited to
4 Plaintiffs' Motion to Consolidate Related Adversary
5 Proceedings and Enter an Amended Scheduling Order (related
6 document(s)76) filed by Nickolas Karavolas on behalf of Bank
7 of Bermuda (ECF #79)

8
9 HEARING re Adversary proceeding: 20-07007-rdd Sears Holdings
10 Corporation et al v. Tisch et al Objection to Motion I
11 Limited Objection of the Non-Insider Defendants to Motion to
12 Consolidate Related Adversary Proceedings and Enter an
13 Amended Scheduling Order (related document(s)76) filed by
14 Melissa Boey on behalf of the Sears Non-Insider Defendant
15 Group. (ECF #85)

16
17 HEARING re Adversary proceeding: 20-07007-rdd Sears Holdings
18 Corporation et al v. Tisch et al Objection Notice of Joinder
19 in the Limited Objection of the Non-Insider Defendants to
20 the Motion to Consolidate the Related Adversary Proceedings,
21 and Enter an Amended Scheduling Order (related
22 document(s)85) filed by Daniel J. Guyder on behalf of HBOS
23 FINAL SALARY PENSION SCHEME. (ECF #86)

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25

1 HEARING re Adversary proceeding: 20-07007-rdd Sears Holdings
2 Corporation et al v. Tisch et al Objection Joinder to
3 Limited Objection of the Non-Insider Defendants to the
4 Motion to Consolidate Related Adversary Proceedings and
5 Enter an Amended Scheduling Order (related document(s)85)
6 filed by Bill Gussman on behalf of Andrew H Tisch, Daniel R
7 Tisch, Trustee of the Andrew H. Tisch (ECF #88)

8
9 HEARING re Adversary proceeding: 20-07007-rdd Sears Holdings
10 Corporation et al v. Tisch et al Objection /Joinder in
11 Limited Objection of Non-Insider Defendants to Motion to
12 Consolidate (related document(s)85) filed by Hugh M.
13 McDonald on behalf of MUFG UNION BANK NA. (ECF #89)

14
15 HEARING re Adversary proceeding: 20-07007-rdd Sears Holdings
16 Corporation et al v. Tisch et al Objection /Joinder In
17 Limited Objection Of The Non-Insider Defendants To Motion To
18 Consolidate (related document(s)85) filed by Brian J.
19 Poronsky on behalf of GF TRADING LLC, HAP TRADING, LLC, RIEF
20 RMP LLC, RIEF Trading LLC.(ECF #90)

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1 HEARING re Adversary proceeding: 20-07007-rdd Sears Holdings
2 Corporation et al v. Tisch et al Objection to Motion Joinder
3 and Limited Objection of the Horizon and Prescott Defendants
4 to Motion to Consolidate Related Adversary Proceedings and
5 Enter an Amended Scheduling Order (related document(s)76)
6 filed by Robert Honeywell on behalf of HORIZON SPIN-OFF &
7 CORP. RESTRUCTURING FD., Kinetics Portfolio Trust, PRESCOTT
8 ASSOCIATES LP, PRESCOTT GENERAL PARTNERS LLC, PRESCOTT
9 INTERNATIONAL PARTNERS LP, PRESCOTT INVESTORS INC.
10 (ECF #91)

11
12 HEARING re Adversary proceeding: 20-07007-rdd Sears Holdings
13 Corporation et al v. Tisch et al Motion to Join Non-Insider
14 Defendants Motion to Consolidate Related Adversary
15 Proceedings and Enter an Amended Scheduling Order filed by
16 John B. Orenstein on behalf of AQR DELTA FUND, LP, AQR DELTA
17 MASTER ACCOUNT, L.P., AQR DELTA XN FUND, LP, AQR Delta
18 Sapphire Fund, LP. (ECF #93)

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1 HEARING re Adversary proceeding: 20-07007-rdd Sears Holdings
2 Corporation et al v. Tisch et al Response to Motion
3 /PLAINTIFFS OMNIBUS RESPONSE TO MOTIONS TO DISMISS (related
4 document(s)39, 62, 65, 48. 67, 60 69, 43, 64, 46, 61, 55)
5 filed by Joseph L. Steinfeld Jr. on behalf of Sears Holdings
6 Corporation, Sears, Roebuck and Co., The Official Committee
7 of Unsecured Creditors of Sears Holdings Corporation, et al.
8 (ECF #94)

9
10 HEARING re Adversary proceeding: 20-07007-rdd Sears Holdings
11 Corporation et al v. Tisch et al Reply to Motion /Plaintiffs
12 Reply Brief in Support of Their Motion to Consolidate
13 Related Adversary Proceedings and Enter an Amended
14 Scheduling Order (related document(s)76, 93) filed by Joseph
15 L. Steinfeld Jr. on behalf of Sears Holdings Corporation,
16 Sears, Roebuck and Co., The Official Committee of Unsecured
17 Creditors of Sears Holdings Corporation, et al. (ECF #95)

18
19 HEARING re Adversary proceeding: 19-08250-rdd Sears Holdings
20 Corporation et al v. Lampert et al Motion to Consolidate for
21 Trial/ NOTICE OF MOTION TO CONSOLIDATE RELATED ADVERSARY
22 PROCEEDINGS AND ENTER AN AMENDED SCHEDULING ORDER filed by
23 David M. Zensky on behalf of Sears Holdings Corporation
24 (ECF #232)

25

1 HEARING re Adversary proceeding: 19-08250-rdd Sears Holdings
2 Corporation et al v. Lampert et al Statement (related
3 document(s)232) filed by David M. Zensky on behalf of Big
4 Beaver of Florida Development, LLC, Innovel Solutions, Inc.,
5 Kmart Corporation, Kmart Holding Corporation, Kmart Stores
6 of Illinois, LLC, Kmart of Washington, LLC, MaxServ, Inc.,
7 SHC Desert Springs, LLC, STI Merchandising, Inc., Sears
8 Brands Business Unit Corp., Sears Brands, LLC, Sears
9 Development Co., Sears Holdings Corporation, Sears Holdings
10 Management Corp., Sears, Roebuck Acceptance Corp., Sears,
11 Roebuck and Co., Sears, Roebuck de Puerto Rico, Inc., The
12 Official Committee of Unsecured Creditors of Sears Holdings
13 Corporation, et al., acting on behalf of the Debtors'
14 Estates, Troy Coolidge No. 13, LLC. (ECF #233)

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

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3 WEIL GOTSHAL & MANGES LLP

4 Attorneys for Debtors

5 767 Fifth Avenue

6 New York, NY 10153

7

8 BY: GARRETT FAIL

9 JACQUELINE MARCUS

10

11 BALLARD SPAHR LLP

12 Attorneys for Fee Examiner

13 1675 Broadway

14 New York, NY 10019

15

16 BY: PAUL E. HARNER

17 TOBEY M. DALUZ

18

19 HERRICK, FEINSTEIN LLP

20 Attorneys for Official Committee of Unsecured Creditors

21 & Litigation Designees

22 Two Park Avenue

23 New York NY 10016

24

25 BY: CHRISTOPHER CARTY

1 AKIN GUMP STRAUSS HAUER & FELD LLP

2 Attorneys for Official Committee of Unsecured Creditors

3 One Bryant Park

4 New York, NY 10036

5

6 BY: SARA BRAUNER

7 DAVID ZANSKY

8

9 WILMER HALE LLP

10 Attorneys for Lampert et al.

11 7 World Trade Center

12 New York, NY 10007

13

14 BY: DEAN CHAPMAN

15

16 MORGAN LEWIS

17 Attorneys for The Sears Non-Insider Defendant Group

18 1 Federal Street

19 Boston, MA 02110

20

21 BY: SABIN WILLETT

22

23

24

25

1 PHILLIPS LYTLE

2 Attorneys for HSBC Bank Bermuda Limited

3 340 Madison Avenue

4 New York, NY 10173

5

6 BY: NICHOLAS KARAVOLAS

7

8 ALSO PRESENT TELEPHONICALLY:

9

10 C. LEE WILSON

11 JASON FOUNTAIN

12 CARLY EVERHARDT

13 PHILIP ANKER

14 ALIX BROZMAN

15 NOAH LEVINE

16 JACQUELINE MARCUS

17 BEN PAULL

18 CHRISTOPHER STAUBLE

19 DAVID ZENSKY

20 LEE J. ROHN

21 PHILLIP C. DUBLIN

22 JOSEPH SZYDLO

23 RICHARD REDING

24 THOMAS ROSS HOOPER

25 KARA CASTEEL

1 JOSEPH STEINFELD
2 SHANNON GROSS
3 PAUL SCHWARTZBERG
4 NOVA ALINDOGAN
5 NAKISHA DUNCAN
6 MATTHEW GURGEL
7 SIDNEY P. LEVINSON
8 ERIC WEISGERBER
9 DANIEL SHAMAH
10 LAUREN WAGNER
11 JULIA FROST-DAVIES
12 PETER BUENGER
13 ROBERT HONEYWELL
14 JOHN MOLINO
15 MELISSA BOEY
16 ELLIOT MOSKOWITZ
17 WAYNE KELLNER
18 JOHN ORENSTEIN
19 RANDALL ADAMS
20 ROBERT ROSEN
21 VICTOR OBASAJU
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1 P R O C E E D I N G S

2 THE COURT: Good morning. This is Judge Drain.
3 We are here in In Re Sears Holding Corp., et al. for the
4 February omnibus hearing.

5 This is being conducted completely telephonically.
6 You therefore should identify yourself and your client not
7 only the first time you speak, but thereafter so that the
8 court reporter and I can put together your voice with your
9 name.

10 There is one authorized recording of today's
11 calendar. It's taken by Court Solutions, which provides a
12 copy and will do so today to our clerk's office. If you
13 want a transcript of your hearing today, you should contact
14 the clerk's office to arrange for the production of one.

15 Finally, because this is a completely telephonic
16 calendar, you should keep your phone on mute unless of
17 course you're speaking, at which point you need to unmute
18 yourself.

19 So with that introduction, I have the amended
20 agenda filed by the Debtors and I'm happy to go down that
21 agenda in the order stated.

22 MR. FAIL: Thank you, Your Honor. Good morning.
23 For the record, Garrett Fail, Weil, Gotshal & Manges for the
24 debtors. Are you able to hear me all right?

25 THE COURT: Yes, I can hear you fine, thanks.

1 MR. FAIL: Thank you, Your Honor. I'm glad you
2 have the amended agenda filed late last night, at Docket
3 9310 for others following along. There are eight items on
4 the agenda. The first seven are interim fee applications.
5 In the past we've taken them collectively. I suggest that
6 we do the same unless Your Honor has another preference.
7 They include Weil, Gotshal & Manges, Prime Clerk, Akin Gump,
8 FTI Consulting, Herrick Feinstein, Morritt, Hock and
9 Hamroff, and Mr. Harner as the fee examiner. Those are the
10 seven that are going forward this morning on an uncontested
11 basis.

12 THE COURT: Okay.

13 MR. FAIL: I see a number of the professionals are
14 on the line if you have any questions.

15 THE COURT: I have questions only on three. But
16 why don't I begin to ask first whether there have been any
17 developments on any of these applications, i.e. any changes
18 to the amounts sought.

19 MR. FAIL: We are not aware of any, Your Honor.
20 And I have a proposed order subject to today's hearing that
21 we could submit following the hearing. But that's the only
22 reason we haven't submitted anything.

23 THE COURT: Okay. And I just want to confirm,
24 although I think it's clear from my review of his fee
25 application or his firm's fee application, Mr. Harner, you

1 have reviewed each of these applications and they reflect
2 your input?

3 MR. HARNER: Your Honor, we filed a, as we have
4 periodically done with each interim fee application hearing,
5 a status report that for some reason does not appear on this
6 morning's agenda. So apologies if Your Honor did not see
7 that. But we filed that a couple of weeks ago.

8 Among other things in that report, we indicated
9 that we are largely complete, reviewing all of the fee
10 applications through the fifth and the sixth reports will be
11 submitted to the various professionals in short order. This
12 order, as the prior orders -- this proposed order to which
13 Mr. Fail refers, like the prior orders, does, however, put a
14 reservation of rights for us to complete that work and
15 likewise to continue our ongoing conversations with the
16 professionals about issues we may have identified.

17 THE COURT: Okay. Do you recommend any holdback
18 in light of that work, or are you content with the
19 reservation and the right to get disgorgement if you
20 conclude that an objection is warranted to any fee
21 application that I would be considering today?

22 MR. HARNER: Your Honor, my response to that
23 question is the same as when you have inquired at prior
24 hearings when you have identified issues that need to be
25 resolved and it may result in adjustments to fees that were

1 either applied for or previously approved on an interim
2 basis by the Court. We remain satisfied that the ability
3 and financial wherewithal of each of these firms to disgorge
4 if necessary is sufficient at this point in the cases.

5 THE COURT: Okay. All right. I said I had three
6 questions, and why don't I just go through them. First, on
7 the Weil Gotshal application, there is about 414 hours of
8 time on real property leases, Section 365 issues, cure
9 amounts. I'm really -- this is more curiosity than
10 anything, although it may relate to the time spent. Is this
11 work primarily with regard to leases that were neither
12 rejected nor assigned to the buyer under the APA? I'm just
13 confused how --

14 MR. FAIL: That is -- so I don't know that they're
15 necessarily all leases, but it does related to the Debtor's
16 additional sales of parcels, Your Honor. And if my partner,
17 Jacqueline Marcus, wants to correct me, she can. I know I
18 asked the question recently independently of this hearing.
19 But there was additional -- there is still additional real
20 estate work to wind down and to monetize additional parcels
21 and assets. So it is not related to the Transform
22 transaction, or it's not --

23 THE COURT: Okay.

24 MR. FAIL: It's certainly not exclusively or
25 majority related to the Transform transaction from my

1 understanding.

2 MS. MARCUS: Your Honor, this is Jacqueline Marcus
3 from Weil, just to supplement on behalf of the Debtors. The
4 real estate area has been one of the ones which I have been
5 primarily involved. And Mr. Fail is correct. Although our
6 task code is 365 and assumption or rejection, we've really
7 used that task code for all real-estate-related matters, and
8 that includes the sales of various parcels as well as
9 disputes that have arisen for the period of time when the
10 Debtors were in possession. So I'll call it a little bit of
11 a catchall for real estate related matters.

12 THE COURT: Okay. That's helpful. And then the
13 amounts that the Debtors are looking to realize on these
14 sales or the amounts that were at issue based on any claims
15 that the other parties might have, are those well in excess
16 of \$378,000?

17 MS. MARCUS: Yes, Your Honor. There have been
18 actually several real estate dispositions that have been,
19 you know, in the several hundred thousand range, some more
20 than a million. So they are kind of odds and ends, but they
21 have generated significant recoveries for the estate.

22 THE COURT: Okay, thank you. All right. And then
23 on the Herrick application, first I'll note that most of the
24 time for this application is for the role of Herrick as
25 conflicts counsel in the joint reasserted causes of action.

1 But a fair amount of time was also spent on the
2 investigation of the so-called MTN transactions. And I
3 really haven't heard much about that in the last really over
4 a year, maybe more than over a year. Is that matter still
5 ongoing?

6 MR. CARTY: Your Honor, this is Christopher Carty
7 of Herrick Feinstein. Yes, that investigation is still
8 ongoing, although we are getting towards the end of it.

9 THE COURT: Okay.

10 MR. CARTY: To be completed shortly.

11 THE COURT: All right. Okay, very well. And then
12 lastly, the Akin Gump application has a very large number in
13 the expense category for litigation-related expenses. I
14 understand the expenses for the e-discovery firm and service
15 and the like. I just want to make sure there is a mechanism
16 in place -- and this really turns to Mr. Harner again -- for
17 review of the work which is an expense item by the
18 consulting firm hired by Akin. I don't know what -- it's
19 really quite opaque as to what they're doing. I don't know
20 if they are contract lawyers or what their role is. I don't
21 think they're expert witnesses, although maybe I'm wrong
22 about that. So maybe I should ask counsel from Akin Gump
23 first as to what it is generally that that consulting firm
24 has been doing. And then secondly of Mr. Harner as to
25 whether there is a mechanism in place to review their work.

1 MS. BRAUNER: Sure. Good morning, Your Honor.

2 Sara Brauner, Akin Gump, on behalf of the Official
3 Committee. Can you hear me?

4 THE COURT: Yes, I can hear you fine, thanks.

5 MS. BRAUNER: Excellent. So I would turn it over
6 actually to the extent Your Honor would like some additional
7 information about the specifics about that workstream to my
8 partners who are both on the line, David Zensky and Dean
9 Chapman. But I can assure Your Honor that, yes, we are
10 working with the fee examiner to make sure that he has the
11 relevant information about all of the professionals being
12 retained. As Your Honor knows, because we are in this
13 interim period, we have a combination of the interim fee
14 protocols as well as the ability to retain professionals
15 under the confirmation order for purposes of the litigation
16 absent further approval of the Court. So we are working
17 closely with the fee examiner to ensure that he has the
18 relevant information he needs to do that analysis.

19 And I would turn it over to Mr. Chapman or Mr.
20 Zensky to give Your Honor some more detail on the specifics
21 of that engagement.

22 THE COURT: And again, I'm focusing on the Solomon
23 Page group category as opposed to the H5 category, which is
24 document management and e-discovery.

25 MS. BRAUNER: Understood.

1 THE COURT: Or the expert witness category. So
2 it's really just the Solomon Page group. So, yes, if you
3 can tell me what it is, that would be great.

4 MR. CHAPMAN: Good morning, Your Honor. Dean
5 Chapman of Akin Gump.

6 Solomon Page is our first-level document review
7 contract attorney firm. So we did not at Akin Gump do any
8 of the first-level document review. We turned that over to
9 Solomon Page, which bills, you know, \$55 an hour or
10 something in that level.

11 That work is now complete. At least it was
12 complete as of November of December. I'm not sure where we
13 are actually in submitting our invoices to the Court, but it
14 is done from our perspective, and we'll work with the fee
15 examiner of course to provide any additional information
16 that would be helpful to explain the particular documents
17 that were reviewed.

18 THE COURT: Okay. All right. Does anyone have
19 anything further to say on any of these fee applications? I
20 should program just state for the record they're for Weil
21 Gotshal, Prime Clerk, Akin Gump, FTI Consulting, Herrick
22 Feinstein, and Morritt Hock and Hamroff as well as the
23 seventh, which is Mr. Harner's application as fee examiner
24 and Ballard Spahr as counsel's application.

25 MR. HARNER: Your Honor, it's Paul Harner as the

1 fee examiner. I just want to be responsive to your inquiry
2 and to the colloquy about the contract attorneys that have
3 been employed by Akin Gump. We actually have inquired and
4 have had correspondence with Akin Gump, as Ms. Brauner
5 indicates, about that topic. We recognize and have no
6 quarrel with the use, as is ordinary and usual in these
7 kinds of circumstances of contract attorneys to perform an
8 additional level of document review or other discovery. And
9 we are also aware of the provision in the confirmation order
10 that provides the litigation trust with authority to retain
11 without further court approval those kinds of contract
12 lawyers.

13 The issue we have raised, however, is that the
14 expense of that has been presented thus far both in monthly
15 fee statements and in the interim fee applications as a
16 single line item. And we have requested so that the fees
17 themselves may be appropriately reviewed for reasonableness,
18 additional detail, and time detail related to the services
19 of those contract lawyers understanding that they can be
20 retained without court authority, but that the approval of
21 their fees and any related expenses remain subject to court
22 review.

23 So we're working with Akin Gump on that issue, but
24 I wanted to assure the Court that we're aware of it and have
25 had a discussion with them about it.

1 THE COURT: Okay, all right. I think that's a
2 reasonable request. I mean, I think obviously, as you say,
3 this is, now that it's been described to me, a fairly
4 typical expense incurred with respect to litigation that
5 involves significant document review. On the other hand, I
6 think anyone considering a bill that would contain this line
7 item in it would want to know whether any particular
8 attorneys were, for example, billing for 22 hours a day or
9 the like, which just doesn't make sense and would lead to a
10 reduction. So hopefully we are keeping time records and
11 that information will be provided shortly.

12 All right, anyone else on the fee applications?
13 Okay.

14 I have reviewed each of the applications, and my
15 questions about them have been satisfactorily answered on
16 today's record. I believe that the work that has been done
17 and the expenses incurred are reasonable for purposes of
18 Section 331 of the Code.

19 The only issue in my mind after the questions on
20 the individual applications were addressed is whether there
21 should be any holdback at this point given the role of the
22 fee examiner. But I'm satisfied by Mr. Harner's answer to
23 that question and the reservation in the proposed order that
24 his work and his ability to obtain any fruit from that work
25 if it turns out that he concludes, and then ultimately I

1 conclude that time for prior applications and these
2 applications should be disallowed and expenses disallowed is
3 sufficiently preserved, both as a legal and a practical
4 matter.

5 So I'll grant each of the applications in the
6 amount sought on an interim basis, and the Debtor's counsel
7 can submit an order with the Schedules A and B attached
8 covering all seven of them.

9 MR. HARNER: With that, Your Honor, may Ms. Daluz
10 and I please be excused?

11 THE COURT: Yes. And anyone else who is on for
12 just those applications can also be excused.

13 MR. HARNER: Thank you, Your Honor.

14 MS. DALUZ: Thank you, Your Honor.

15 THE COURT: Okay.

16 MR. FAIL: Thank you very much, Your Honor. The
17 next item on the agenda I think is going to be handled by
18 Akin Gump.

19 THE COURT: Right.

20 MR. CHAPMAN: Good morning again, Your Honor.
21 Dean Chapman of Akin Gump.

22 I'm going to speak first on the consolidation
23 motion more generally, and then I will turn it over to Kara
24 Casteel of ASK who will address the specific arguments
25 raised in opposition by various public shareholder action

1 defendants who filed objections to the motion.

2 As I trust Your Honor is aware, the motion was
3 filed jointly in both the first action, that is to say the
4 insider action against Eddie Lampert and others that Akin
5 Gump is prosecuting, as well as the second action, that is
6 public shareholder action that ASK is prosecuting against
7 non-insider shareholders for fraudulent transfer.

8 Prior to filing the motion, we sent a proposed
9 order to defendants in both actions. And after some
10 negotiation with the defendants in the first action, we were
11 able to come to terms on a consensual order, and that is the
12 order attached to the motion. As a result, none of the
13 defendants in the insider or first action have filed any
14 opposition to the motion or the proposed order.

15 There were also negotiations with defendants in
16 the public shareholder action. Plaintiffs did offer some
17 concessions to try to get to a consensual deal, but we were
18 unsuccessful there. And as a result, now defendants have
19 filed various objections. Defendants in the public
20 shareholder have filed various objections.

21 By way of some quick background, Your Honor, which
22 I think is helpful just to level-set where we stand, Akin
23 Gump, as you know, took over prosecution of the adversary
24 proceeding in October of 2019 after the plan was confirmed.
25 And then a month later, November 2019, filed the amended

1 complaint, which remains the operative pleading in the
2 action.

3 Around that same time, we also began exploring, at
4 the direction of the litigation designees, the potential
5 follow-on lawsuit against Sears' public shareholders. As
6 the Court is likely aware, the first action asserts
7 fraudulent transfer claims against Sears' controlling
8 insider shareholders relating to the Lands' End spinoff and
9 the Seritage rights offering. And those insiders owned
10 about 75 percent of the stock of Sears Holdings at the
11 relevant times. That's at least 25 percent of Sears
12 Holdings, shareholders who received the Lands' End shares
13 and the Seritage rights who would therefore also be liable
14 as recipients of fraudulent transfers.

15 Our task, starting last November of 2019, was to
16 take discovery pursuant to Rule 2004 to try and identify
17 those public shareholders in the event that the litigation
18 designees ultimately elected to file a lawsuit.

19 As you can imagine, it was a complex process to
20 try and identify the shareholders. There were, you know,
21 tens of millions of shares outstanding, and those shares
22 were often held by financial institutions in street name on
23 behalf of underlying beneficial owners. And of course it's
24 those beneficial owners that we needed to ultimately
25 identify.

1 Over the course of, you know, nine months or so,
2 Akin and our counsel at Morritt Hock served 127 subpoenas
3 aimed at identifying those public shareholders. And as we
4 all know now, the litigation designees opted to proceed with
5 the lawsuit against those Sears public shareholders or
6 groups of affiliated Sears public shareholders who would
7 receive the benefit of \$2 million or more from the Lands'
8 End or Seritage rights. And then ASK was retained to
9 actually handle drafting of the complaint, service of that
10 complaint, and prosecution of the action.

11 The motion before you is for consolidation of the
12 two actions, the insider action filed by Akin and the public
13 shareholder action filed by ASK. I won't belabor this
14 point, but in our view, consolidation of the two actions is
15 a no-brainer. The underlying fraudulent transfer claims are
16 the same. They're intentionally-constructed fraudulent
17 transfer claims relating to Lands' End and Seritage. The
18 plaintiffs of the claim -- I'm sorry, the plaintiffs are the
19 same, the claims are the same, the discovery will be the
20 same, and the proofs at trial will be the same as well.

21 The only real difference between the two actions
22 is the defendants named, and of course any individualized
23 defenses those defendants might raise. But for the sake of
24 judicial resources and estate resources and the need to
25 avoid duplicative depositions and so forth, we think

1 consolidation makes a whole lot of sense in this case.

2 In addition to the consolidation, we've also
3 submitted to the Court our proposed order which includes a
4 schedule, a proposed schedule to govern discovery in the
5 consolidated cases. As I mentioned at the outset, that
6 schedule was fully negotiated with the insider action
7 defendants in advance and reflects the deal struck between us
8 and them.

9 With respect to written discovery, it allows for
10 written discovery to continue in the insider action, and
11 then for written discovery to commence immediately upon
12 entry in the public shareholder action.

13 As we note in the brief and as I think Your Honor
14 is aware, extensive written discovery has already been
15 obtained in the first action. We have millions of documents
16 that we've obtained from defendants and third parties at
17 considerable expense. And those documents are available to
18 any of the public shareholder action defendants who want
19 them immediately upon the execution by those defendants of a
20 document-sharing stipulation that we have put together.

21 With respect to depositions, there are a variety
22 of deadlines contained in the proposed schedule, but
23 briefly, 28 days after Your Honor finished his ruling on the
24 motions to dismiss in the insider action, the parties are to
25 exchange lists of proposed deponents. A week later, they

1 are to conduct a scheduling logistics conference regarding
2 depositions. And then 45 days after that scheduling
3 conference, the actual deposition hearing may begin. So
4 we're talking a total of 80 days between a decision on the
5 motions to dismiss and potential commencement of
6 depositions, fact depositions in the cases.

7 There aren't any other deadlines that have been
8 fixed in the schedule. Instead, the parties are simply to
9 conduct a second case scheduling conference 150 days after
10 the first conference to discuss completing that discovery
11 and then proceeding into expert discovery as well.

12 So I'll pause there for a minute. If Your Honor
13 has any questions, great. But I think, you know, to state
14 the obvious, we view the schedule as being fair and
15 appropriate. You know, it's unlikely to result in
16 depositions any time before the end of May, which we think
17 is at this point a more than fair compromise by plaintiffs.

18 Again, I'll pause and also turn it over to Kara
19 Casteel of ASK who can address some other things.

20 THE COURT: Okay. Well, I think maybe Ms. Casteel
21 is the right one to answer this question. Under the
22 proposed schedule, the schedule proposed by the plaintiff,
23 document discovery in the second adversary would commence
24 upon entry of the order. What is contemplated by the
25 plaintiff in the second proceeding by way of document

1 discovery of the defendants?

2 MS. CASTEEL: Good morning, Your Honor. This is
3 Kara Casteel of ASK. And that's actually the question I
4 anticipated you to ask because I know that's the greatest
5 concern, at least what I can ascertain from the motions of
6 defendants.

7 Frankly, not a lot from the second action
8 defendants at the outset. I think what we're most concerned
9 with is the factual issues with Computershare Inc. and
10 Computershare N.A. My understanding is that there's already
11 been some discovery taken on Computershare for the Seritage
12 rights action or accounts as to what entities performed what
13 functions. And there is a clear, you know, stack issue here
14 as to Computershare. That's what we're most interested on.

15 Frankly, you know, part of the reason to
16 consolidate is that the same proofs at trial, the same facts
17 really relate to Sears' insolvency, badges of fraud of
18 Sears. So I don't anticipate a lot of discovery on the
19 second action defendants here other than maybe confirming
20 they received the shares, you know, confirming the numbers
21 are right. I don't anticipate taking any personal
22 jurisdiction discovery until if and when any personal
23 jurisdiction motions are filed, because frankly, that's a
24 waste of estate resources to put the cart before the horse.

25 So I think there has been concern there. And

1 maybe it was on us to perhaps clarify in our meet and
2 confers that we really are interested in getting discovery
3 on Computershare going first, and we'll see where we go with
4 the second action defendants. But frankly, most of the
5 discovery has been done that we're interested in.

6 THE COURT: Okay. Now, obviously you've been
7 living with this, and I haven't. What role is Computershare
8 playing here?

9 MS. CASTEEL: Sure. There's -- Sears contracted
10 with Computershare to perform the Lands' End dividend
11 duties. And part of the motions to dismiss involved whether
12 or not Sears is a financial institution based on its
13 interactions with Computershare. And a large material fact
14 issue here is whether the duties performed were
15 Computershare Inc. or Computershare N.A. And that forms a
16 lot of our response as to why a motion to dismiss is
17 inappropriate at this time based on material fact issues as
18 to which entity was performing those functions.

19 THE COURT: All right. But Computershare -- is
20 Computershare a defendant in action number two?

21 MS. CASTEEL: No, it is not, Your Honor.

22 THE COURT: And you would be seeking discovery of
23 Computershare, not of the defendants then with respect to
24 those issues, those particular issues?

25 MS. CASTEEL: Correct, Your Honor. You know,

1 there might be some preliminary discovery. We haven't even
2 thought out the timing of it because there's no -- there's
3 no cutoff to discovery at this moment. So, you know,
4 confirming that the share numbers are right and that they
5 did in fact receive the shares is not something that has to
6 be propounded immediately. There's no sense of urgency as
7 much with that. Really what we want to focus on is getting
8 out discovery to Computershare on the Lands' End transfers
9 in the same respect that they've already gotten discovery in
10 the first action as to the Seritage right transfers.

11 THE COURT: Okay. all right. So I just want to
12 confirm -- I'm not sure which of you is the right one for
13 this, whether it's you, Ms. Castell, or Mr. Chapman. Have
14 you at this point reached agreement on the document release
15 stipulation, document sharing stipulation, or is that still
16 being negotiated?

17 MR. CHAPMAN: I think the answer is both of us.
18 This is Dean Chapman from Akin Gump.

19 The parties to the first action are signed
20 (indiscernible) sharing stipulation. And with that, Kara,
21 you can speak to the second action.

22 MS. CASTEEL: Yes. So the form has been presented
23 to counsel in the second action. My understanding is there
24 might be some non-substantive edits, as defendants sometimes
25 like to do. But to date we haven't gotten back any proposed

1 revisions yet as to it. But plaintiffs stand ready to have
2 them executed and get over the documents from the first
3 action.

4 THE COURT: Okay. And then this is for Ms.
5 Casteel. The proposed order contemplates, it says in
6 Paragraph 4B, that, quote, "The Plaintiffs shall commence
7 the process of providing documents produced in the first
8 action following execution of the document sharing
9 stipulation." Is there a time limit on when that process
10 ends? Again, I'm focusing on the next date, which as you
11 say, is not a date to complete document discovery, but
12 rather to designate or exchange lists of proposed deponents,
13 which is 28 days after the Court decides the motion to
14 dismiss, or if this is later, March 15th.

15 So one of the objections I think correctly points
16 out that this language, "Plaintiffs shall commence the
17 process" is somewhat open-ended. And if you have to --
18 let's assume for example that I ruled on March 15th, the 28
19 days would start running then. It would be hard for them,
20 conceivably they've argued, to even review if everything
21 were provided right away within 28 days to notify you of any
22 proposed witnesses. But it would be that much harder if in
23 fact the documents weren't fully provided until say seven
24 days until that 28-day deadline ran.

25 MS. CASTEEL: Understood, Your Honor. And I'll

1 take this chance to clarify the word commence. We've been
2 working with the IT firm that Akin has employed regarding
3 some of these documents. And my understanding -- and Mr.
4 Chapman can clarify or provide a little insight. They stand
5 ready to provide immediate transfer, file downloads,
6 transfers, whatever is needed to get the documents in their
7 hands. So the word commence is not intended to have some
8 sort of rolling discovery process.

9 THE COURT: Okay. It would all happen at once?

10 MS. CASTEEL: Correct. And maybe Mr. Chapman can
11 provide some insight on that. But my understanding are the
12 documents are ready to go and it's just a matter of
13 connecting the right people with the IT firm and defense
14 counsel and getting them the documents they need.

15 THE COURT: Okay. And it's roughly 870,000 page?

16 MR. CHAPMAN: This is Dean Chapman at Akin Gump.
17 It's going to be more than that. There are -- let me look
18 at my notes here. I would guess it's going to be around
19 five million documents.

20 THE COURT: Okay. All right.

21 MR. CHAPMAN: And that is -- you know, the notion
22 of commencement, again, was never meant to suggest we were
23 going to delay or take time. It's in our interest to move
24 as quickly as possible of course.

25 THE COURT: Okay.

1 MR. CHAPMAN: But it's just because there are a
2 lot of documents, it's difficult to say and we promise that
3 within 48 hours it will be done. You know, to some extent
4 we are bound by the time it takes for the technology to
5 perform its function.

6 THE COURT: For how long have the defendants in
7 the first action had access to those roughly five million
8 documents?

9 MR. CHAPMAN: They've come in over time. They
10 would have gotten -- at least the first say one-and-a-half
11 million in January or so of 2020. The remainder would have
12 come in all by say May, June, July, the summer time period.

13 THE COURT: Okay. Okay. All right. So, Mr.
14 Chapman, I think you were done and Ms. Casteel was going to
15 address the objections in more detail.

16 MS. CASTEEL: Yes, Your Honor. I can speak to
17 them.

18 Your Honor already brought up discovery. That was
19 obviously one of the largest objections shared by most of
20 the objectors, is that they didn't want discovery to start
21 until the motion to dismiss in the second action had been
22 decided. I can address that more, Your Honor, but I think
23 perhaps the biggest objection was the thought that there
24 would be some large-scale discovery on defendants.
25 Plaintiffs don't intend that. The main goal right now is to

1 get started on discovery against -- preponderant to the
2 Computershare because that's the largest fact issue we have
3 remaining for the Lands' End transfers because those counts
4 weren't briefed in the first action in the motion to
5 dismiss, so the discovery process as to the Lands' End
6 shares didn't start yet.

7 The other objections, the three main objections
8 were should the actions be consolidated at all while the
9 motion to dismiss is pending. And if they are consolidated,
10 how much, to what extent should they be consolidated.

11 As to the first objection, I think there's ample
12 reasons to consolidate these notwithstanding outstanding
13 motions to dismiss. There's no prejudice to the motions to
14 dismiss if they're consolidated. Rather, they'll be dealt
15 with. Either the motions to dismiss will be granted or the
16 motions to dismiss will be denied and the case will move on.
17 So consolidating them at this time doesn't really have an
18 effect on the motion.

19 There is ample reason to consolidate the matters.
20 They involve the same underlying facts, they involve the
21 same plaintiff, they involve the same proofs at trial. All
22 the reasons that, you know, caselaw has suggested that
23 discretion of the judge would warrant consolidating matters.

24 The other objection, the majority of defendants
25 did agree that consolidation in some form should occur. But

1 the largest group of defendants in the second action, the
2 non-insider defendants as they're called, they object to an
3 order that consolidates it generally without carving out a
4 reservation as to trial. And it's Plaintiff's position that
5 the proposed order fully provides that the rights of any
6 party to sever defendants, sever accounts for trial at a
7 later date after discovery has been fleshed out if issues
8 come to light in litigation that would warrant it. But it's
9 our position that a piecemeal order now that reserves that
10 isn't necessary. The same proofs needed for both are going
11 to be at trial, the same witnesses that are deposed, the
12 same expert witnesses are going to be the same ones that
13 will be presented for trial. You know, even if not all of
14 them are represented, even a small number are presented,
15 really the efficiencies of consolidation for pretrial
16 purposes warrant them for trial.

17 And again, no rights are waived here. There is a
18 full right of any defendant to move at a later date to sever
19 for trial. So it's our position that consolidation is
20 warranted here of the case, it's warranted for the entire
21 case, and that discovery should proceed apace. And there's
22 plenty of time for the second action defendants to receive
23 the documents in advance of any depositions to be had. You
24 know, there's ample time after a decision is made on the
25 motion to dismiss to provide lists and to start scheduling

1 depositions. I think the dates are the later of March 15th
2 or a decision on the order. Even if a decision came out
3 March 15th, the earliest that depositions would occur is
4 June 3rd based on the timing in the proposed order. And
5 we're in February now. So given that there's defense groups
6 working together and they can, you know, they can benefit
7 from the work the first action counsel has already done
8 having access to these documents, we don't think there's
9 prejudice in commencing discovery upon entry of the
10 scheduling order.

11 THE COURT: Has there been discussion of a joint
12 defense agreement to facilitate cooperation between the
13 action two defendants and the action one defendants?

14 MS. CASTEEL: Your Honor, I don't know that
15 question myself. I'm not sure if any defense counsel on
16 this call has any comments on that.

17 MR. WILLETT: Good morning, Your Honor. This is
18 Sabin Willett from Morgan Lewis. We represent a group of 80
19 non-insider defendant funds in the second case. And there
20 have been preliminary discussions about that.

21 THE COURT: Okay. And I appreciate the word
22 preliminary, and I know you're a careful lawyer. You're
23 certainly free to say I can't answer that question now, but
24 I'll ask it anyway. Have there been any insuperable
25 obstacles to a joint defense agreement that would allow you

1 to have strategy discussions with your opposite member or
2 members in action one, like Mr. Anker or any of his
3 colleagues at Debevoise, for example, and elsewhere?

4 MR. WILLETT: Your Honor, again, Sabin Willett. I
5 don't think so. But the problem, if I can wade into it with
6 a couple of toes, the problem is not a fear that our clients
7 are going to get, you know, routine discovery requests about
8 whether they received shares. The problem is the 5 million
9 documents that you have to catch up to somehow. Even if
10 you're cooperating with the --

11 THE COURT: No, I understand that. I'm focused on
12 the five million documents, too. But it seems to me that
13 the only real -- the most problematic issue here is the
14 identification of proposed deponents, which is 28 days from
15 the date of a ruling on the motions to dismiss in the first
16 action. And it would seem to me the only way you could
17 really be reasonably comfortable that that time would
18 suffice is if you were able to sit down and really talk
19 through with the first action defendants' counsel the
20 process and thinking behind designating deponents. It would
21 seem to me that your deponents would largely if not entirely
22 overlap with theirs. But you'd have to obviously do your
23 due diligence. And you couldn't deal with five million
24 documents in that period of time, I don't think.

25 MR. WILLETT: Right, Your Honor. And I probably -

1 - I'm sorry.

2 THE COURT: And even if the clock started running
3 tomorrow if I entered the order, that would only add, you
4 know, a couple of weeks to that time. Anyway, so that's
5 where I was going with that.

6 MR. WILLETT: Well, Your Honor, this --

7 THE COURT: I think if you have six months to
8 prepare for a deposition and even longer of course to
9 prepare for trial, that the five million documents would
10 present much, much less of a problem. So I'm focused
11 primarily on the harder deadline of identifying deposition
12 witnesses.

13 MR. WILLETT: Right, Your Honor. I think the
14 colloquy has illustrated that there's actually not that much
15 difference between the parties. What we have essentially
16 said is that we'd like this process that's outlined for case
17 one to begin after you have ruled on all of the motions.
18 Our hearing is March 12th. Many of the issues are the same.
19 Some are not the same. But if we can, you know, start down
20 a road after you have ruled, some or all of the outsiders
21 may not have to start down that road at all. And we are in
22 that unique corner of the forest where you can get sued in a
23 situation where you lacked any agency and where all of the
24 actions, all the relevant actions are undertaken by others.
25 So some sympathy is warranted for the outsider defendant in

1 a situation like this.

2 If we were able to persuade you on all of the
3 grounds for the motion, then none of them would have to
4 proceed with this substantial expense. If we were able to
5 persuade you on half, say Seritage and not Lands' End, or
6 vice versa, then some of the outsiders would also not have
7 to undertake expense. And so the --

8 THE COURT: So if I -- let me make sure I
9 understand what you're saying, then. So the real issue is
10 not with the deadlines in the proposed order so much as it
11 is that it runs from the dismissal or not dismissal
12 determination in respect to the first action motions to
13 dismiss.

14 MR. WILLETT: Yes, Your Honor.

15 THE COURT: But as long as those deadlines run
16 from the determination of both sets of motions, then,
17 particularly with some of the clarifications that we've gone
18 through this morning, this doesn't represent much of a
19 problem.

20 MR. WILLETT: I think we can -- yes, I think we
21 can get on board if we're able to get past the hearing and
22 have in front of us your ruling on the motions.

23 THE COURT: Okay. I guess the one area where I
24 might disagree with you on that is the commencement of the
25 document production. It really doesn't seem to me based on

1 what I've heard from the plaintiff's counsel that they're
2 actually looking for any material document production from
3 your clients or any of the other defendants, but rather just
4 from the third party on the nature of the agency.

5 MR. WILLETT: Yes. May I speak to that, Your
6 Honor?

7 THE COURT: Okay.

8 MR. WILLETT: And I probably should caution as
9 well, we don't represent all of the defendants. There are
10 others that --

11 THE COURT: No, I understand. But all but one of
12 them have joined in your motion. So --

13 MR. WILLETT: Right.

14 THE COURT: In your opposition I mean.

15 MR. WILLETT: So two points on that. First, I
16 don't think that the discovery of Computershare will be
17 relevant, but that's only what I think, and I know it's not
18 controlling.

19 I don't think we'd have any objection to them
20 starting document discovery of Computershare with regard to
21 Lands' End, which I think is what they want to do. Or if
22 there's more on Seritage, we wouldn't object to that
23 starting now, either.

24 And I should comment that the delay on the
25 protective order -- as Your Honor may know, every

1 institution has its own house rules about discovery,
2 protective orders, and various rings that must be kissed and
3 folks in the office who have to be consulted. And so sort
4 of wrangling a group this size -- I don't think that there
5 are any major problems, but wrangling the group on, you
6 know, what are the rules about document destruction after
7 the fact and things like that is just taking a little time.

8 THE COURT: All right. Okay. So it seems to me
9 the real issue is 4C of the order, which we've already
10 talked about.

11 MR. WILLETT: Yes, Your Honor.

12 THE COURT: In particular, it's tracking off of a
13 ruling on the motions to dismiss in the first action.

14 MR. WILLETT: Yes, Your Honor.

15 THE COURT: Now, I know there is another objection
16 as opposed to one in which people have joined, which is --
17 which I haven't dealt with yet. So I thought I would give
18 you an opportunity. But I think I interrupted counsel for
19 the plaintiffs by going down this road, but I think it's
20 been productive.

21 Let me throw something else out that may be
22 productive. My ruling on the motions to dismiss in the
23 first action obviously has been delayed. In part it was
24 delayed because I got really busy towards the end of the
25 summer and beginning of the fall. It also was delayed

1 because, frankly, I wanted to see how the insurance
2 litigation played out and in light of the stay order. I
3 think the parties did, too. And then of course this lawsuit
4 was started, i.e. the second action. And the motions to
5 dismiss were filed in the second action, which are scheduled
6 to be heard on March 12th.

7 It is highly likely to me that I will rule on both
8 sets of motions to dismiss at the same time and that that
9 ruling I trust will be before the end of March. So that may
10 -- and obviously there's no reason why you all would know
11 that, or even if you could guess that, wouldn't be sure of
12 it. So that may affect people's thinking about this motion
13 and the discovery elements of it. And I thought I would get
14 that out on the table.

15 But why don't I go back to Ms. Casteel and ask if
16 you have anything more to say. I think you do. I think I
17 interrupted you on the timing points. But I expect you have
18 more to say than that.

19 MS. CASTEEL: Your Honor, I frankly can't remember
20 if you interrupted me or not, but I agree that that was
21 something good to flesh out and talk about. Because as we
22 were sitting here talking about it, we thought of one maybe
23 proposed compromise here, which is that my understanding is
24 counsel in the first action, they're ready to go, we've had
25 the discovery, they're ready to go on depositions, and don't

1 want to unduly delay it after a decision on the motion to
2 dismiss. That being said, we understand that there's a lot
3 of documents for the second action defendants to go through
4 notwithstanding the fact that certain joint defense
5 agreements might cut down on some of that work.

6 So, you know, if perhaps they had 30 to 60 more
7 days to propose additional deponents, that would solve the
8 solution here if the second action defendants got some
9 additional time. Because if the first action parties
10 designate someone to be deposed, that really doesn't affect
11 the second action. They can either agree and they can
12 participate in the deposition or they can decide it's not
13 relevant to them and not show up. There's not really
14 prejudice by getting the process going. There's also not an
15 end date to discovery under the scheduling order.

16 So if they need an additional 30 to 60 days to
17 continue going through documents and they decide as they do
18 that that there's more deponents that their depositions
19 should be taken, perhaps that's a solution here that allows
20 things to go forward and will also give them some more time
21 to go through these documents.

22 THE COURT: Okay. All right. Did you have
23 anything more to say in response to the objections, or do
24 you want to hear argument --

25 MS. CASTEEL: Your Honor, I guess I would just --

1 I want to make clear that we think it would be appropriate
2 to have this timeline start from the decision in case one
3 and the omnibus motion in case two and to not delay these
4 matters any further by yet-to-be-filed personal jurisdiction
5 motions, if any, that might be forthcoming in the cases.

6 The first matter has been outstanding for some
7 time. The second one, while filed later, was the result of
8 months of work. These transactions aren't getting any
9 younger, and there's plenty of secured admin priority
10 creditors that, you know, are relying on these forums to
11 seek relief in the case, and we think it's appropriate to go
12 forward as soon as we can.

13 THE COURT: Okay. I'd like to throw something out
14 on the yet-to-be-filed jurisdictional motions to dismiss,
15 which is have the parties met and conferred as to the
16 probable bases for those motions? I don't know if it's
17 subject matter jurisdiction, for example, or personal
18 jurisdiction, if it's just an issue that can be correct with
19 proper service. Has there been any discussion as to what
20 those grounds would be?

21 MS. CASTEEL: Your Honor, no. We really haven't
22 gotten into it other than that, you know, the defendants
23 wanted to move forward with common issues as to all
24 defendants and reserve boutique issues as to their
25 defendants for a later date and time to conserve resources

1 is my understanding. So we haven't gotten into specific
2 arguments such as this defendant hasn't been properly
3 served, this defendant -- you know, the only one we've
4 briefly touched upon is one defendant that has some
5 sovereign immunity issues that is probably one that comes to
6 mind. But I haven't gotten into the weeds with any
7 defendants on their specific claims.

8 THE COURT: Okay. Just one thing I was going to
9 raise with you, although both sides seem to want to put off
10 the issue of personal jurisdiction, is whether it would make
11 sense to have that meet and confer and to take, if it's
12 warranted, limited discovery on the jurisdictional issues
13 with respect to those parties that would conceivably raise
14 them. So that if, for example, a schedule was going to be
15 moving forward, it wouldn't be further delayed by a
16 subsequent post motion process of taking discovery just on
17 jurisdictional issues.

18 MR. WILLETT: Your Honor, Sabin Willett. May I
19 respond?

20 MS. CASTEEL: Sure.

21 THE COURT: Okay.

22 MR. WILLETT: This one you may recall we actually
23 requested a departure from the usual Rule 12 rule not to
24 have to bring these bespoke motions, and they typically are
25 personal jurisdiction or sovereign immunity now, in part

1 because they might become mooted if we were successful on
2 the global motion, and in part because they tend to prolong
3 things indefinitely. So we didn't think that we could then
4 turn around and say, but the whole case needs to wait while
5 those things get resolved.

6 So at least our group -- and I don't speak for
7 every defendant -- but our group has not asked for any delay
8 in the case as a consequence of the -- and we do have some
9 clients who do have potential personal defenses like that.

10 THE COURT: Okay. But I think here -- and this is
11 I think the main difference between your objection and the
12 objection by HSBC Bermuda. So maybe I should hear from
13 their counsel as well as Ms. Casteel on the point I've
14 raised.

15 MR. KARAVOLAS: Yes, Your Honor. Nicholas
16 Karavolas, Phillips Lytle, for HSBC Bank Bermuda. And I was
17 actually just going to chime in. So thank you, Your Honor.

18 We did have an initial discussion with Ms. Casteel
19 yesterday. I don't want to go into the details because it
20 was partially, you know, a settlement discussion. But we
21 did highlight that in addition to service issues, our client
22 does assert that there is a personal jurisdiction issue as
23 well to be dealt with.

24 We were not part of the stipulation that was -- we
25 were not a party to stipulation that was entered in late

1 December, and we thought that it made sense to ensure that
2 we were kind of narrowing the issues with counsel as far as
3 what our concerns are. And there are other concerns, both
4 substantive and procedural, but we wanted to make sure that
5 those -- we had an initial discussion regarding those
6 concerns of our client.

7 And so I understand that there is still some
8 information being discovered through the holder of the
9 Seritage rights. Obviously my client is impacted -- they're
10 being sued only in connection with the Seritage rights
11 transaction. But there are some issues regarding identity
12 of the accountholder. I understand from Plaintiff's counsel
13 that they're still in the process of obtaining that
14 information. And I appreciate that, you know, they're kind
15 of tied to whatever information they're provided. But in
16 the same instance, it seems as if at the end of the day when
17 the dust settles, we'll reach the conclusion that my client
18 wasn't, you know, the appropriate party to be sued here.

19 And, you know, our biggest concern really -- and I
20 might as well kind of go into a little bit on, you know,
21 what our objection is about. But I think that the
22 consolidation and the discovery issues are interrelated. I
23 don't think it was a coincidence that these issues were
24 brought to the forefront in the same motion. I don't
25 necessarily have -- you know, I don't think we necessarily

1 have any issue with consolidation of the actions, and we
2 understand the efficiencies to be served by bringing them
3 together. But there is prejudice that comes with that. And
4 it's clear from the proposed scheduling order that there
5 would be prejudice, especially to those parties that we
6 think would be asserting personal jurisdiction defenses in
7 this action. To the extent that, you know, these are
8 parties that are not even subject to the jurisdiction of the
9 Court, that these -- you know, to engage in full-blown
10 discovery, you know, just to determine at some later point
11 that they're, you know, not subject to the jurisdiction of
12 the Court is unduly burdensome. And it seems fundamentally
13 unfair to move in the procedure that, you know, the
14 plaintiffs have proposed. So we filed a separate --

15 THE COURT: Well, let me push back on that. Can I
16 push back on that? I mean, I appreciate that one can raise
17 certain jurisdictional issues at any point in the case,
18 including on appeal. But at the same time, it strikes me as
19 odd that one could say I'm going to raise it, and just by
20 saying it without actually doing it obtain a stay of all
21 discovery in the adversary proceeding. That just doesn't --
22 I mean, that -- maybe it doesn't rise to the level of super-
23 secret double probation, but it kind of does. I mean, I
24 think the caselaw deals with actual motions that have been
25 filed that are pending before a court where there's an

1 assertion of lack of jurisdiction and therefore a request to
2 stay discovery or opposition to discovery on that grounds.

3 But here, I think there's got to be some balance
4 between saying that you might have a basis to object to the
5 continuation of a lawsuit and for dismissal of it based on
6 jurisdictional grounds, and therefore just by saying it
7 precluding discovery.

8 So I guess I'm more in the camp of Mr. Willett on
9 this that, you know, those motions would have to be dealt
10 with, but it's kind of up to the movant to get them on so
11 that they don't have to spend more money on discovery, which
12 I think at this point we've pretty much narrowed down to not
13 discovery being taken of the movant -- I'm sorry, taken of
14 your client, but rather getting prepared for actions that
15 need to be taken at the earliest sometime this summer.

16 MR. KARAVOLAS: I understand, Your Honor.
17 Nicholas Karavolas for HSBC Bank Bermuda. And I would just,
18 you know, highlight that the request for the scheduling
19 order does not -- I appreciate counsel's comments on the
20 record regarding what discovery is anticipated in this
21 action, and I think that if that's the understanding, that's
22 a fair understanding.

23 However, I think it should be -- you know, there's
24 no real restriction on the taking of discovery in the
25 proposed order. And once the cat's out of the bag, you

1 know, there's no way to really curtail that other than to
2 seek court intervention at some point later on. But I do
3 appreciate the -- you know, I think it is helpful that
4 counsel did make the comment of what type of written
5 discovery would be anticipated in this case.

6 THE COURT: Okay. All right. Does anyone -- I
7 appreciate there are a lot of people on the phone. You all
8 should appreciate -- I haven't said it, but I have read the
9 pleadings on this, so there's no need to repeat the
10 pleadings. But does anyone have anything more to say on
11 this motion or the objections?

12 MS. CASTEEL: Your Honor, this is Kara --

13 THE COURT: Go ahead, Ms. Casteel.

14 MS. CASTEEL: Your Honor, Kara Casteel for ASK. I
15 just wanted to point out that the parties, the second action
16 parties entered a stipulated scheduling order. And I
17 appreciate HSBC didn't sign it, but we're honoring it as to
18 them, too. Because obviously they preserved their personal
19 jurisdiction defense, if any. So we are allowing them to be
20 under the stipulation. We wouldn't assert they couldn't
21 object. But it provides that any of these other defenses
22 have to be -- that the motions need to be filed within 30
23 days after the court rules on the omnibus motion.

24 I know you had brought up whether or not it made
25 sense to take some limited discovery as to personal

1 jurisdiction. In terms of timing, we certainly don't look
2 to initiate it right away. I would say that perhaps it
3 would make sense after ruling on the omnibus motion if this
4 matter proceeds forward and there are parties intending on
5 filing personal jurisdiction motions, it might make sense
6 for the parties to work together to extend that schedule
7 maybe 30 days to take some limited discovery and allow them
8 some time to file their motions after that discovery in
9 terms of timing. But prior to a decision on the omnibus
10 motion, we're not looking to do any discovery on those
11 issues.

12 THE COURT: Okay. I think, Mr. Willett, you were
13 going to say something?

14 MR. WILLETT: Yes, Your Honor. Just two more
15 points from us this morning. First, we haven't touched on
16 the consolidation for trial issue. And I think the dispute
17 between the parties is whether to do it now with an unwind
18 later or to just -- as Ms. Casteel suggests, or to just wait
19 and see how the world looks after you have ruled and
20 whatever discovery is going to happen as had we started to
21 proceed. I just can't quite understand what jumping the gun
22 now does for anyone. There won't be any prejudice to
23 addressing this later. Our opponents may well be correct,
24 but we just don't know yet. So that's the first thing.

25 The second was I think that if Your Honor sort of

1 lays down the principle that the triggering event for the
2 review and deposition setup period would be ruling on both
3 motions, we could probably go back to our offices and come
4 up with a consensual order.

5 THE COURT: Okay.

6 MR. WILLETT: At least speaking from the
7 perspective of my group. Thank you, Your Honor.

8 THE COURT: Okay, that's helpful. Thank you. All
9 right.

10 Well, as a practical matter, that's what's going
11 to happen. I find it hard to believe that I wouldn't rule
12 on one without at the same time ruling on the other set of
13 motions to dismiss.

14 Let me -- I reviewed the order carefully, the
15 proposed order, and I did want to discuss with you, since it
16 may well be that the parties do go back and work out a
17 consensual order, there are a couple of points I wanted to
18 discuss with you.

19 Obviously the lawyers working on this matter,
20 which includes the lawyers for the defendants in the first
21 action, are very capable and very experienced. And they've
22 worked out the terms of this order. So I don't want to be
23 mucking up the works. But I do want to point out my
24 concerns about the following points.

25 Paragraph 4C states in the second sentence, "The

1 parties shall conduct one or more meet-and-confers regarding
2 fact depositions." And then it's the defined term, "The
3 deposition scheduling conference" regarding, among other
4 things, the identify of deponents, the logistics, the
5 length, conducted remotely if necessary, preliminary
6 schedule, no later than the date that is one week, seven
7 days, after the exchange date.

8 And I guess the issue I have there is how do you
9 know when that conference is done since it's more than one,
10 since D and E of Paragraph 4 trigger off of the conference,
11 the defined term. I just think you need to have some
12 mechanism to trigger D and E. It could be that outside
13 date, i.e. seven days after the exchange date. But it's
14 probably a fairly minor point since it's only seven days,
15 but it doesn't quite fit in to D and E.

16 And I think you need to also provide for the
17 scheduling, just so you have it there, of at least one more
18 pretrial conference rather than the open-ended without any
19 court involvement in this. I think F kind of does that,
20 because it refers to a case scheduling conference which is
21 not with the court. But then it says, "and report back to
22 the Court", which doesn't really contemplate an additional
23 conference.

24 So I think you ought to consider at least
25 tentatively scheduling a conference, even if it's not

1 necessarily the conference that must occur after you're done
2 with discovery. And you can provide that the parties can
3 adjourn that conference on consent if they've not completed
4 discovery.

5 And I guess to deal with Mr. Willett's point about
6 why consolidate now, I think it may make sense to have that
7 discovery -- I'm sorry, that pretrial conference include as
8 subject matter the issues to be considered at trial and
9 their order of consideration, and finally, whether there
10 should be any deconsolidation at that point just so that
11 there is a forum for a discussion on those issues before
12 people get deep into preparing for a trial.

13 So I would recommend that you work into this order
14 at least one formal pretrial conference with the Court for
15 two reasons. One is basically at least a reality check in
16 this order as to when people think now, today, discovery
17 will be done and people can focus on the trial. And two, a
18 date where some defendant can say, you know, now that we're
19 here, we think that the trial should be deconsolidated for
20 whatever reason.

21 And then I think you probably should clarify 4B as
22 to, you know, the -- the only process in 4B for releasing
23 the documents is a logistical process in getting it to the
24 right person on behalf of the defendant in each case. And
25 probably some statement to the effect that any discovery

1 sought by the plaintiffs of the second action defendants
2 will be consistent with the representations made at the
3 hearing on the motion or materially consistent with it
4 pending the Court's determination of the motion to dismiss
5 in the second action.

6 And then I think it is a good idea to have a
7 second date for designating witnesses -- I'm sorry,
8 deponents for the second action defendants. Although since
9 I believe both as a legal and practical matter it makes
10 sense to have C track off of a decision on the motions to
11 dismiss in both actions, that it doesn't need to be
12 materially longer than the 28 days. You know, I would say
13 maybe another 30 days and -- unless the parties want to
14 agree on a somewhat longer period for the second action
15 defendants.

16 So those are my comments on the order. I'm going
17 to give you my ruling and then people can come back to me if
18 any of those comments just doesn't make sense to them and
19 they want to persuade me or the other parties that we
20 shouldn't address it that way.

21 The motion really seeks two forms of relief, and
22 they are clearly related. First, the motion by the
23 plaintiffs in both adversary proceedings, i.e. Sears Holding
24 Corp. et al. v. Edward Scott Lampert, et al. and Sears
25 Holding Corp., et al. v. (indiscernible) Tisch, et al.

1 Mainly, the motion seeks that those two adversary
2 proceedings be consolidated for purposes of Bankruptcy Rule
3 7042, which incorporates Federal Rule of Civil Procedure 42
4 which in 42(a) provides for the consolidation of actions
5 involving a common question of law or fact.

6 The second relief that the motion seeks is entry
7 of an order that not only consolidates the actions, but
8 provides for a timetable for discovery in the action. The
9 motion has been objected to in part by a majority of the
10 defendants in action number two, that is the Tisch
11 proceeding. It has not been objected to by the parties, the
12 defendants in action number one, the Lampert, et al.
13 adversary proceeding.

14 The objections, particularly the limited
15 objections, focus really at this point exclusively on the
16 timing aspect of the relief sought here with respect to
17 discovery, and more specifically as to the motion's request
18 that the parties shall exchange lists of proposed deponents
19 by the later of 28 days from the date the court issues an
20 order deciding the last of the motions to dismiss in the
21 first action, i.e. the Lampert action, and March 15, 2021,
22 the exchange date. And then other timing provisions for
23 discovery track off of that exchange date.

24 The parties who either filed or joined in the
25 limited objections contend that given the pendency of the

1 motions to dismiss in the second action, which are scheduled
2 for oral argument on March 12th, the exchange date should
3 track off of the later of the determination of the motions
4 to dismiss in the first and the second action.

5 The other objection, which is by HSBC Bank,
6 Bermuda branch, makes a second point, which is that it may
7 have a separate grounds for dismissal than the motion that
8 I'm going to hear on March 12th on jurisdictional grounds.
9 The plaintiffs have agreed previously that such a motion,
10 i.e. on jurisdictional grounds, can be made at a later time
11 and instead that that would apply to HSBC Bank Bermuda even
12 though it was not a party to that stipulated order. HSBC
13 argues therefore that since it's not yet filed, motion to
14 dismiss might moot out the entire adversarial proceeding as
15 to if I should not enter any discovery order that would
16 implicate it with having either to provide discovery or
17 review the voluminous discovery that Paragraph 4B of the
18 proposed order contemplates being released upon entry of the
19 order by the plaintiff from the discovery taken in the first
20 action.

21 The standard for evaluating a motion to
22 consolidate under Rule 42(a) is not disputed by the parties.
23 It's laid out by the Second Circuit in Johnson v. Celotex
24 Corp, 899 F.2d 1281, 1285 (2d Cir. 1990), which states that
25 in the exercise of the court's discretion in determining

1 whether actions should be consolidated in whole or in part,
2 the court needs to consider, quote, "Whether the specific
3 risks of prejudice and possible confusion are overborne by
4 the risk of inconsistent adjudications of common factual and
5 legal issues, but burden on parties' witnesses and available
6 judicial resources posed by multiple lawsuits, the length of
7 time required to conclude multiple suits as against a single
8 one, and the relative expense to all concerned of the single
9 trial, multiple trial alternatives." See also In Re MF
10 Global Holdings Ltd., 464 B.R. 619, 623, (Bankr. S.D.N.Y.
11 2012).

12 Here, it is clear that with respect to two of the
13 transactions at issue in the first action, the same facts as
14 to the transactions are the subject matter of the second
15 action. And therefore, with regard to requests to
16 consolidate the two actions, it appears clear to me, and I
17 believe also even clearer to the objectors, that the
18 presence of those common, factual, and to a very large
19 extent legal issues argue strongly for consolidation of the
20 two actions, starting with the discovery phase and subject
21 to a lookback after discovery is fully complete through
22 trial for the convenience of all parties and the orderly
23 determination of the underlying issues without risk of
24 inconsistent rulings and duplication of depositions and
25 other discovery and trial presentations.

1 I believe with a sufficient forum in the form of
2 an already-scheduled, i.e. to be scheduled in the order,
3 post-discovery pretrial conference consolidating the
4 matters, the adversary proceedings, now is warranted under
5 the facts considered by courts in this circuit.

6 The real issue, again, is the timing issue. The
7 courts are clear that while one of the grounds for the
8 Supreme Court's adoption of the plausibility approach to
9 motions to dismiss is to curtail expensive and lengthy
10 discovery while not warranted by the face of the complaint.

11 The filing of a motion to dismiss does not per se
12 lead to the stay of discovery. Courts have recognized an
13 exception where the motion to dismiss is premised upon a
14 jurisdictional grounds, which would clearly moot out the
15 relief sought, limiting discovery under those circumstances
16 to discovery as to the jurisdictional arguments raised in
17 the motion to dismiss to the extent they are fact-based.
18 But even there, the courts have been careful to say
19 notwithstanding dicta in *Filus v. Lot Polish Airlines*, which
20 was a sovereign immunity case ultimately, 907 F.2d 1328,
21 1332 (2d. Cir. 1990) that, quote, "A motion to dismiss does
22 not ultimately stay discovery except in cases covered by the
23 Private Securities Litigation Act. Best discovery should
24 not be routinely stayed simply on the basis that a motion to
25 dismiss has been filed. However, upon a showing of good

1 cause, a district court has considerable discretion to stay
2 discovery pursuant to Federal Rule of Civil Procedure 26(c),
3 and in some circumstances a pending motion to dismiss may
4 constitute good cause for a protective order staying
5 discovery. A court determining whether to grant the stay of
6 discovery pending a motion must look to the particular
7 circumstances and posture of each case. Courts consider,
8 one, the breadth of discovery sought, any prejudice that
9 would result, and three, the strength of the motion.”

10 The O’Sullivan v. Deutsche Bank AG, 2018 U.S.
11 Dist. LEXIS 70418 *13-14 (S.D.N.Y Apr. 26, 2018) and the
12 cases cited therein, see also Judge Engelmayer’s decision in
13 Campanelli v. Flagstar Bancorp Inc. 2019 U.S. Dist. LEXIS
14 211740 *5-7 (S.D.N.Y. Dec. 9, 2019), and Magistrate Judge
15 Wang’s decision in Medina v. City of New York, 2020 U.S.
16 Dist. LEXIS 100456 *5-8 (S.D.N.Y. Jun. 8, 2020).

17 Here, I believe that the order as I suggested it
18 be revised sufficiently protects the prejudice that might
19 result to the second action defendants by the discovery
20 timetable that was initially proposed and that further
21 delaying discovery until a motion to dismiss on
22 jurisdictional grounds is ultimately filed, if ever, would
23 unduly prejudice the other parties to the adversary
24 proceeding and is not warranted.

25 As a practical matter, again, I’ve noted that it’s

1 highly likely that I will rule on the motions to dismiss
2 that are pending in the second action at the same time that
3 I rule on the motions to dismiss that were previously argued
4 and are sub judice in the first action.

5 So as a practical matter, the proposal in
6 Paragraph 4C would cover -- or the exchange date would
7 trigger off of a ruling in both actions, and there's no
8 reason not to provide for that now in the order so that
9 there is no doubt about that.

10 And as I've noted during oral argument, I think
11 the other changes to the order conceivably protect the
12 objecting defendants in action number two from any undue
13 prejudice in discovery. That would take place before a
14 ruling on those two sets of motions to dismiss and with
15 respect to preparing for compliance with the deadlines that
16 are triggered off of the exchange date.

17 So subject to hearing from anyone if they think
18 that the proposed changes just simply don't make sense,
19 that's my ruling on this motion.

20 MR. CHAPMAN: Your Honor, this is Dean Chapman
21 from Akin Gump. Two quick observations. First, I just
22 wanted to express our gratitude to the Court for giving us
23 some indication on where things stand with the motions to
24 dismiss. It certainly helps resolve some uncertainty around
25 that.

1 Second, Your Honor, with respect to Section 4C,
2 you had raised a question about the fact that there is a
3 reference to one or more meet and confers, the defined term
4 deposition scheduling conference, you know, it might be
5 confusing. We'll obviously go back and address this. But
6 so the record is clear, plaintiff's position is that whether
7 or not the deposition scheduling conference is one meet and
8 confer or two meet and confers or whatever, all of those
9 meet and confers take place within seven days after the
10 exchange date in Section 4C.

11 THE COURT: Right, okay. (indiscernible) them.
12 You say that they'll have that conference. And in any
13 event, the things in D and E occur -- they run off of seven
14 days after the exchange date.

15 MR. CHAPMAN: That makes sense.

16 THE COURT: Okay. Anything else? All right.

17 So as far as the pretrial conference that I'd like
18 you to build into this order, I want to be clear, that is
19 there as a holding date. If the parties have good reason,
20 either together or someone can persuade me over other
21 parties' objection to move that conference, I am certainly
22 prepared to do that. But I just think we need to have a
23 marker there so that parties really see some date that the
24 Court will hear as opposed to just getting an email report
25 that's also filed of where the parties are after their case

1 scheduling conferences.

2 It's fine to have those case scheduling
3 conferences, don't get me wrong. I want you to have those
4 so that when you have the pretrial conference, you can say
5 all right, we're done, we have all these issues resolved,
6 this is how we want the trial to proceed. Or alternatively,
7 this is how most of us want to proceed, but the following
8 issues have arisen and there's a forum so the parties can
9 raise those issues in front of me.

10 So hopefully I'll have an order that's agreed on
11 this. If it's not agreed, I'd like you to just submit the
12 order and let me know if someone has said that they want to
13 submit a proposed counterorder, which they should submit no
14 more than a couple of days after the order is emailed to
15 chambers if that -- you know, if that's (indiscernible) at
16 that point. So I don't want to have another hearing on
17 this, just (indiscernible) on the proposed order -- orders
18 if someone can't agree to the actual form of order.

19 Any other questions, or does anyone have anything
20 more to say? Okay.

21 Thank you all. So I will look for that order,
22 hopefully (indiscernible).

23 That concludes today's calendar, I believe. I
24 think all the other matters on the calendar, Mr. Fail, were
25 -- I'm not sure he's on. Ms. Marcus -- Mr. Fail is -- all

1 the other matters on the calendar were adjourned, correct?

2 MR. FAIL: That's correct, Your Honor. I was just
3 trying to unmute.

4 THE COURT: Okay, very well. So I will hang up at
5 this point. Thank you all.

6 (Whereupon these proceedings were concluded)

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RULINGS

Page Line

Applications Granted

25 9

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: February 24, 2021